

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NICHOLAS STEVEN SMITH,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:04CV74 RWS
)	
MICHAEL BOWERSOX,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before me on the petition for writ of habeas corpus filed by Petitioner Nicholas Smith. I referred this matter to United States Magistrate Judge Frederick R. Buckles for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On March 7, 2007, Judge Buckles filed his recommendation that Smith's habeas petition should be denied.

Objections to Judge Buckles' Report and Recommendation were due to be filed by March 19, 2007. As of the date of this order, no objection to the Report and Recommendation has been filed.¹ After careful consideration, I will adopt and sustain the thorough reasoning of Judge Buckles and will deny Smith's habeas petition for the reasons stated in the Report and Recommendation dated March 19, 2007.

¹ On March 7, 2007, a copy of the Report and Recommendation was mailed to Smith at his last known address. This mail was returned to the Court as undeliverable. The envelope was marked with a stamped "Unable to Find" notation. Smith is a pro se petitioner. Under E.D. Mo. Local Rule 2.06(B) pro se petitioners must promptly notify the Clerk of Court and all other parties of any change of the petitioner's address. Smith's failure to notify the Court of his current address has resulted in his inability to receive Court filings and, as a consequence, has prevented him from filing a timely objection to the Report and Recommendation.

I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)). Because petitioner has not made such a showing in this case, I will not issue a certificate of appealability. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation filed on March 7, 2007 is adopted and sustained in its entirety.

IT IS FURTHER ORDERED that Petitioner Nicholas Steven Smith's Petition for Writ of Habeas Corpus is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

A separate Judgment in accordance with this Memorandum and Order is entered this same date.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 28th day of March, 2007.